

REMARKS

Claims 7-62 were previously pending in this application. By this response, Applicant adds new claim 63. As a result, claims 7-63 are pending for examination with claims 7, 24, 43, 62, and 63 being independent claims. No new matter is added.

I. Independent Claims 7, 24, 43, and 62 Are Patentable

Claims 7-16, 18-35, and 37-42, and 62 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Atala (US 5,571,119) in view of Mericle (US 5,752,964). Claims 17, 36, and 43-61 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Atala in view of Mericle in further view of Gordon (US 5,741,277). Applicant traverses these rejections.

Independent claims 7, 24, and 43 each define a suturing instruments that comprises among other features that vary between the claims, a cutter that moves in the instrument to cut suture wire at a location near a distal end of a shaft to free a wire suture loop or an annular fastener from the instrument. Independent claim 62 defines a method of forming a loop suture that comprises, among other things, moving a cutter in an instrument to cut the suture wire to free the suture wire loop from the instrument.

Atala is directed to a device for assisting a surgeon in passing a suture through tissue. In operation, the surgeon passes the needle (90) of Atala's instrument through tissue so that a port (93) in the needle passes through the tissue. Suture is then extended from the port and is grasped by surgeon before the needed is retracted from the tissue. (See generally, Column 9, lines 26-65). The needle of Atala may include blade-like interior and exterior cutting edges, which the Patent Office previously suggested were capable of being used to cut suture material. (See generally, column 5, lines 46-48).

In the Office Action, it is conceded that Atala does not teach or disclose a cutter that moves in the instrument. To satisfy this deficiency, the Office Action looks to Mericle, suggesting that combining Atala and Mericle would have been obvious to eliminate the need for an additional cutting instrument and to offer multi-functionality and simplicity.

One of skill in the art would not add another cutter to the device of Atala, and particularly not for the reasons provided in the Office Action. The device of Atala already has the capability of cutting suture with the blade-like edges of the needle, as previously asserted by the Patent Office. In this respect, there is no need for an additional cutting instrument when the device of Atala is operated. Atala already has a cutting blade, and offers multi-functionality and simplicity. One would not be led to modify Atala based on the reasons cited in the Office Action.

The device of Atala is also not amenable to the inclusion of a cutter, like that taught by Mericle. Mericle teaches the importance of being able to push a knot and to precisely cut excess suture after the tying of a knot. (See generally col. 3, lines 14-16). To accomplish this, Mericle has a flattened, spatulated tip that receives suture material with a knot that is to be pushed. The relatively large, curved needle tip of Attala is incompatible with a spatulated tip, like that taught in Mericle. It is unclear how exactly these two features could operate together on the same device. Undoubtedly, the curved needle tip of Atala would impede the capture of suture material with a knot to be pushed or potentially damage adjacent tissue during the process of capturing suture material. Additionally a spatulated tip, if incorporated onto the needle, would impede the smooth passage of the tip through tissue or potentially increase trauma to the tissue during the process of suturing.

The cutter of Mericle is for precisely cutting excess suture after the tying of a knot, as discussed above, and not to free a wire suture loop or an annular fastener from an instrument, as recited by independent claims 7, 24, 43, and 62. In this respect, even if one of skill were capable of adding the cutter of Mericle to the device of Atala, one would not configure the cutter to free a wire suture loop or an annular fastener from the instrument, as recited in claims 7, 24, 43, and 62.

For at least the above described reasons, one of skill would not combine Atala and Mericle, such that the rejection of claims 7-62 over the combination of Atala and Mericle, or

Atala, Mericle, and Gordon, is improper. Accordingly, withdrawal of these rejections is respectfully requested.

II. Independent Claim 63 Is Patentable

Applicant adds new independent claim 63, which is believed to be in condition for allowance. Claim 63 is supported throughout the specification, and particularly by Figures 12-15 and paragraph [0033] of the corresponding published application, such that claim 63 is believed to read on the elected species. Applicant appreciates that the subject matter of claim 63 has not previously been searched, and that new searching would likely be required, such that any Office Action issued by the Patent Office should not be made final.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

By:


Walt Norfleet, Reg. No. 52,078
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
Telephone: (617) 646-8000

Docket No.: D0188.70165US02
Date: October 31, 2007
x11/15/07x